

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 15 Subcontracting by Negotiation

Subject: 15.4 Source Selection

PURPOSE: This standard practice (SP) defines procedures for soliciting and evaluating offers, and determining source selection for negotiated procurements.

POLICY Laboratory policy is to award to the supplier whose offer is the most advantageous to the Laboratory.

SCOPE: This SP applies to all negotiated solicitations and evaluations of offers. See SP 15.1, *Subcontracting by Negotiation – General* for information about subcontracting by negotiation.

PROCEDURES:

General

In determining the most advantageous offer, the procurement specialist may consider cost/price as well as other variables such as: performance, delivery schedule, technical capabilities, safety record, transportation costs, warranty, quality, previous performance, experience, personnel and resources, security considerations, socioeconomic program participation, or any other factors that are of importance to the Laboratory.

Source Selection and Evaluation When Cost/Price is the Primary Factor

The greater the emphasis on cost/price in evaluating offers and determining award, the more cost-effective and time-efficient is the process for both the Laboratory and the suppliers.

Solicitation of Offers

It is the procurement specialist's responsibility to oversee the solicitation process. The solicitation process is employed to ensure responsive, reasonable, and fair offers. Offers are solicited from those suppliers identified in the supplier identification process (See SP 5.1, *Publicizing Subcontract Actions*). At the discretion of the procurement specialist, offers may be solicited from other suppliers as they become known during the solicitation process.

Procurement specialists are to solicit and receive offers verbally whenever appropriate. Verbal solicitation of offers for procurements with a value exceeding \$500,000 must be approved by a Group Manager. Verbal offers over \$100,000 must be confirmed by offerors to the Laboratory in writing prior to issuance of the subcontract.

Verbal solicitations can be supplemented by furnishing suppliers with subcontract information either in hard-copy, facsimile, or electronic form, and may still require some written information from the offeror, such as a Representations and Certifications form, a subcontracting plan, etc. However, whenever there are risk considerations involved (for example, environmental, safety, health or security concerns) or there are detailed or lengthy instructions, conditions, specifications, or drawings, the

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procurement specialist should solicit and receive offers in writing.

The solicitation should include all applicable information, such as item description (including drawings and specifications, if applicable), quantity, delivery requirements, special conditions for award (including whether split/multiple awards may be made), quality requirements, solicitation closing date (the date offers are required), a sample subcontract/agreement, etc. The procurement specialist will advise the suppliers of any requirements that the Laboratory considers to be significant.

An essential element that must be included in all solicitations is the basis for award. Normally, the basis for award will be the responsive and responsible offer containing the combination of factors that offer the best overall value to the Laboratory. A responsive supplier is one whose offer satisfies the requirements of the solicitation, including the technical requirements of the proposed procurement. A responsible supplier is one that is considered capable of performing and is otherwise eligible and qualified to perform the proposed procurement. The procurement specialist shall determine whether a supplier is responsive and responsible. If necessary, the procurement specialist should obtain input from the requester regarding these determinations.

Answers to any technical questions should be coordinated between the procurement specialist and the requester. The procurement specialist must be privy to, and should participate in, all communications between the requester and the suppliers during the solicitation phase. Any information given to one supplier that would constitute an unfair advantage must be given to all suppliers solicited.

Offers are normally solicited only when funds are available for award. However, in instances where funds are not fully available the suppliers must be so advised in writing in the solicitation.

Evaluation of Multiple Offers

Evaluation of multiple offers (two or more) consists of a comprehensive comparison of the offers. Evaluation of offers is frequently the most complex aspect of a procurement because often there are many variables involved, and the relationship among these variables must be considered. In addition, the concept of fairness weighs heavily during the evaluation process. Thus, evaluation of offers requires judgment and experience.

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The procurement specialist, with the assistance of the requester if appropriate, performs the evaluation of offers. Offers are evaluated in accordance with the basis for award set forth during the solicitation phase. In cases where the procurement specialist awards to other than the supplier offering the lowest price, the procurement specialist will document the requester's concurrence.

The procurement specialist may choose to negotiate with one or more suppliers, or may choose to award without negotiations. Judgment is required in deciding when to negotiate, and fairness is required when deciding with whom to negotiate. Negotiations may be appropriate in the following instances:

- When there is an unusual disparity in offers;
- When the prices offered are unusually high;
- When offers received are essentially equal; or
- Any other instance where the procurement specialist determines that conducting negotiations is in the best interest of the Laboratory.

The procurement specialist should only conduct negotiations when it is cost effective to do so, based on the perceived benefits to be gained. The procurement specialist should negotiate with all suppliers considered to have a reasonable chance of being selected.

Evaluation of a Single Offer from a Competitive Solicitation.

The procurement specialist, with the assistance of the requester if appropriate, evaluates the offer to determine if it meets the requirements of the Laboratory and if the price is reasonable. The procurement specialist may make an award based on the original offer or negotiate with the supplier if it is considered advantageous to do so based on the perceived benefits to be gained.

Documentation

The evaluation shall be documented to the extent necessary to allow a reader to reasonably ascertain that the best offer was selected

Source Selection and Evaluation When Factors Other Than Cost/Price are Primary

In addition to the procedures below, whenever cost/price is a factor but does not predominate the evaluation, refer to the *Source Selection and Evaluation User's Guide* for additional guidance.

Establishment of the Buying Team

The procurement specialist will establish a buying team to identify minimum requirements, if any, and the desired performance features and supplier attributes (i.e., the evaluation

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factors), and to evaluate the offers. The team should normally consist of two individuals, the procurement specialist and a representative of the requester. Additional personnel may participate as members of the buying team, particularly when subject matter experts are necessary to evaluate the minimum requirements and/or desired features.

The requester's representative should be an individual who is considered to have expert technical knowledge of the subject matter. The procurement specialist will ensure the process is conducted in a fair and ethical manner and be responsible for preparation and control of all required documentation.

All Laboratory personnel participating on the buying team are subject to the State of California Political Reform Act, as implemented in University of California Business Bulletin BUS-43, Part 7. Laboratory or any other personnel may not participate in the selection process if they have a real or apparent conflict of interest, as defined in BUS-43, Part 7.

Preparation of the Solicitation

When factors other than cost/price are primary, all solicitations should be in writing and should describe the Laboratory's requirements and/or objectives for the procurement, as prepared by the buying team; the evaluation factors to be used; and the proposal preparation and submittal instructions. The solicitation normally will be in the form of a letter, which may include the descriptions identified above, either in the body of the letter, in a statement of work, or in other attachments, as appropriate. If advantageous to the Laboratory, the procurement specialist may also indicate in the solicitation the amount of available funding. The description of the Laboratory's requirements, goals and/or objectives, and evaluation factors to be used should be consistent with the minimum requirements, desired performance features and supplier attributes, and evaluation factors provided below.

Minimum Requirements

The solicitation must address any minimum requirements which must be satisfied in order for a prospective supplier to be considered for selection. The minimum requirements may be stated as mandatory performance conditions for the product/services to be provided and/or as necessary supplier qualifications.

The minimum requirements must be clearly stated and easily determinable. They need not be detailed, but must state any restriction that would affect the responsiveness of the offer and allow an objective finding to be made that the supplier either has or has not met a minimum requirement.

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Minimum requirements should be used sparingly and only when it is necessary to identify specific requirements critical to success performance of the planned procurement. Numerically based minimum requirements are discouraged, as they tend to restrict competition and may disqualify a prospective supplier that is only fractionally deficient in meeting them.

Desired Performance Features and Supplier Attributes

The solicitation should address the performance features and supplier attributes which the Laboratory believes are desirable in meeting its objectives for the procurement. They should serve as the basis for the preparation and the evaluation of the offers.

The desired performance features should focus on the products/services to be delivered, method of performance, or both. They may include, for example: form, fit and function; feasibility, applicability, and reliability; process or work methodologies; ease of use; technological innovations; and any other features of performance which may be of value to the Laboratory. The desired supplier attributes should focus on the qualifications and capabilities of the supplier to perform the proposed procurement. They may include, for example: the technical qualifications, experience and past performance (both of the supplier and its personnel); the resources available to the supplier (facilities and equipment, financial, etc.), socioeconomic status and small business programs participation, and any other attributes of the suppliers which may be of value to the Laboratory.

The discussion of desired performance features and supplier attributes in the solicitation should indicate that consideration will be given to other performance features and supplier attributes proposed by suppliers; i.e., other than those identified by the Laboratory in the solicitation, which may be of value to the Laboratory.

Evaluation Factors

The solicitation should, at a minimum, include a statement of the primary factors to be used for the evaluation of offers and selection of the successful supplier. The evaluation factors should include the price or cost, any minimum requirements, and the performance features and supplier attributes that represent value to the University and will serve as discriminators in making a selection. There should be no predominant evaluation factor and no relative importance or numerical weight should be assigned to any evaluation factor.

Normally, an evaluation factors statement similar to the following should be used.

“The Laboratory intends to select for award the Offeror whose proposal [satisfies the minimum requirements

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and] contains the combination of price (or probable cost), performance features, and supplier attributes offering the best overall value to the Laboratory. The Laboratory will determine the best overall value by comparing differences in performance features and supplier attributes offered with differences in price (or probable cost), striking the most advantageous balance between expected performance and the overall price (or probable cost) to the Laboratory. Offerors must, therefore, be persuasive in describing the value of their proposed performance features and supplier attributes in enhancing the likelihood of successful performance or otherwise best achieving the Laboratory's objectives. The Laboratory may select the Offeror whose proposal is considered to offer the best overall value compared to proposals with either higher or lower prices (or probable cost)."

The selection factors statement may be tailored to reflect the nature of the solicitation and selection methodology. The buying team may additionally explain the evaluation factors, depending on the nature of the requirement and the level of focus desired from the offerors.

Selection Process Selection Phases

The selection process will vary from action to action, depending upon the complexity of the action and the number of offers received. The selection process may include all of the phases set forth below, or may combine or omit phases as appropriate under the circumstances.

Initial Evaluation

The buying team will evaluate offers in accordance with the evaluation factors set forth in the solicitation. Whenever possible, the buying team should make a selection based on evaluation of initial offers in lieu of determining finalists (as set forth below). In such a case, negotiations may be conducted with the apparent successful supplier to resolve any open issues necessary to effect a subcontract/agreement. This may be typical in research and development (R&D) and service contracts where the Laboratory desires to negotiate changes in emphasis or orientation in an otherwise superior offer.

Determination of Finalists

The buying team may identify finalists among the suppliers for the purpose of conducting parallel negotiations. Finalists should include all suppliers considered to have a reasonable chance of being selected for an award. If one or more suppliers are determined not to be finalists, the procurement specialist will briefly state the reason in the file. Nonfinalists should be excluded from further consideration.

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Parallel Negotiations

The buying team will conduct parallel negotiations with those suppliers determined to be finalists. Use of parallel negotiations should take advantage of the competitive environment and the responsiveness of suppliers in completing negotiations, as well as allowing the negotiations to be tailored based upon any proprietary information not previously available or inappropriate for inclusion in a proposal. The buying team shall consider the changes made to the offers of the competing finalists as a result of the parallel negotiations, in selecting for award the finalist whose proposal offers the best overall value to the Laboratory.

Conduct of Negotiations

The procurement specialist shall conduct the negotiations, supported by the other members of the buying team. The procurement specialist must ensure that all suppliers are treated fairly, that their proprietary or business-sensitive information is not disclosed to a competitor, and that all negotiations are conducted in a fair and ethical manner.

It may be appropriate for the parties to sign a memorandum of negotiations indicating the agreements reached during individual negotiation sessions, pending award and signature execution of the subcontract/agreement. A memorandum of negotiations is especially appropriate for negotiations conducted over an extended period and for comparison of negotiated offers for selection of a successful finalist after parallel negotiations.

Selection Documentation

The procurement specialist will document the selection of the successful supplier in a selection statement. The selection statement will record the steps (or phases) taken in the evaluation process. In addition, the selection statement will record the rationale for selection of the successful supplier by identifying the factors used for the evaluation of offers and selection of the successful supplier. Since the evaluation factors are expressed in terms of performance features and supplier attributes, the reasons for selection will focus on the results to be achieved, rather than the detailed approach the supplier will use.

The selection statement should also include a comment that the successful supplier's offer represents the best value based upon a combination of price (or probable cost), performance features, and supplier attributes. Little or no such comment is required when the selected supplier possesses the lowest price (or probable cost) and highest performance features and supplier attributes. The selection statement should be succinct and not reveal details of the successful offer that are proprietary or business-sensitive.

Split/Multiple Awards

In certain cases, the procurement specialist may choose to split

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the award or make multiple awards. This usually occurs when not all goods and services can be purchased from one supplier due to supplier capability, pricing, delivery, etc., or when necessary to maintain two or more essential sources of supply. The procurement specialist may split an award or make multiple awards when it is in the best interest of the Laboratory to do so. If there is the likelihood that a solicitation will result in a split award or multiple awards, the procurement specialist must so inform the suppliers.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist shall:

- Oversee the procurement process;
- Solicit and receive offers verbally whenever appropriate;
- Obtain the Group Manager's approval for verbal approvals over \$500,000;
- Include all applicable information in the solicitation;
- Coordinate technical questions with the requester;
- Evaluate all offers with the buying team;
- Determine whether it's appropriate to negotiate with one or more suppliers;
- Document the selection and evaluation processes as appropriate; and
- Make a split or multiple award when appropriate.

Group Manager

The group manager shall approve verbal solicitations of offers for procurements over \$500,000.

Buying Team

The buying team shall:

- Establish minimum requirements when appropriate;
- Establish performance features and supplier attributes;
- Establish evaluation factors;
- Evaluate offers in accordance with the factors established in the solicitation;
- Determine finalist(s); and
- Participate in negotiations when appropriate.

REFERENCES

Prime Contract Clause I.10 – Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.

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Prime Contract Clause I.49 – Competition in Contracting

Prime Contract Clause I.50 – Subcontracts for Commercial
Items

Prime Contract Clause I.114 – Contractor Purchasing System